

August 12, 2020

The Honorable Nicholas G. Garaufis
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

RE: Plaintiffs' unopposed letter for coordinated status conference in *State of New York, et al. v. Trump, et al.*, No. 17-CV-5228 (NGG) (JO), and *Batalla Vidal, et al. v. Wolf, et al.*, No. 16-CV-4756 (NGG) (JO).

Dear Judge Garaufis,

Plaintiffs in *State of New York v. Trump*, No. 17-CV-5228 (the State Plaintiffs) write in further support of our August 11, 2020 request (Dkt. 264) that the Court treat the August 13, 2020 status conference in *Batalla Vidal v. Wolf*, No. 16-CV-4756, as a pre-motion conference in the *State of New York* action as well.¹ I am authorized to state that Defendants agree with this request.

Sixteen States and the District of Columbia filed this suit on September 6, 2017, alleging among other claims that Defendants' termination of Deferred Action for Childhood Arrivals (DACA) was arbitrary and capricious under the Administrative Procedure Act, and violated the equal protection guarantee of the Fifth Amendment's Due Process Clause. Dkt. 1. On September 7, 2017, the *State of New York* action was assigned to this Court as a related case to *Batalla Vidal*, No. 16-CV-4756. Order of Sept. 7, 2017, No. 17-CV-5228.

Although the cases were not formally consolidated pursuant to Fed. R. Civ. P. 42, the Court coordinated proceedings, held joint hearings, and issued joint orders and opinions in the two actions to avoid duplication and minimize burden on the Court and parties. *See, e.g., Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018) (granting motions for preliminary injunction in both 16-CV-4756 and 17-CV-5228); Minute Entry of Jan. 30, 2018 (coordinated proceedings held on January 30, 2018); Order of Jan. 26, 2018 (setting schedule for joint argument); *Batalla Vidal v. Duke*, 295 F. Supp. 3d 127 (E.D.N.Y. 2017) (granting in part and denying in part Defendants' motions to dismiss in both 16-CV-4756 and 17-CV-5228); Order of Sept. 15, 2017, Dkt. 28 (Orenstein, M.J.) (coordinated discovery).

Defendants appealed both actions, and the Supreme Court granted certiorari before judgment (where the Second Circuit had heard oral argument on Defendants' appeals, but had not ruled). On June 18, 2020, the Supreme Court held in consolidated actions (including the two actions filed in this Court) that the rescission of DACA was arbitrary and capricious. *Dep't of*

¹ Earlier today, Plaintiffs' counsel (with Defendants' counsel) contacted the Court's Courtroom Deputy to inquire about videoconference logistics for the August 13, 2020 case conference in *Batalla Vidal*, 16-cv-4756. The Courtroom Deputy advised the parties that the *State of New York* Plaintiffs should file this letter explaining further our position that the *State of New York* action should be heard at the same time as the status conference already scheduled for *Batalla Vidal*. This letter is in response to that notice.

Homeland Sec. v. Regents of the Univ. of California, 140 S. Ct. 1891 (2020). The Supreme Court remanded all cases “for further proceedings consistent with this opinion.” *Id.* at 1916.

Following the Supreme Court’s decision, the Second Circuit issued its mandate in this litigation and remanded to this Court for further proceedings consistent with *Regents*. See Mandate, *Batalla Vidal v. Trump*, No. 18-485, Dkt. 667 (2d Cir. July 29, 2020). The *State of New York* appeal had been consolidated with the *Batalla Vidal* appeal at the Second Circuit, see Order Consolidating Appeals, *Batalla Vidal v. Trump*, No. 18-485, Dkt. 61 (2d Cir. Mar. 8, 2018), and the mandate that issued on July 29, 2020 was issued in both actions. The mandate remanding to this Court for further proceedings was then docketed with this Court in both actions as well. See Mandate, No. 16-CV-4756, Dkt. 299 (July 29, 2020); Mandate, No. 17-CV-5228, Dkt. 260 (July 29, 2020).

On remand, the plaintiffs in both actions have advised this Court within the past week of their intent to seek leave to amend or supplement their complaints to challenge the same agency decision—the new memorandum issued on July 28, 2020 by Acting Secretary of Homeland Security Chad Wolf that makes interim changes to DACA. See Letter Requesting Pre-Motion Conference, No. 16-CV-4756, Dkt. 302 (Aug. 6, 2020); Letter Requesting Pre-Motion Conference, No. 17-CV-5228, Dkt. 264 (Aug. 11, 2020). As set out in those letters, the plaintiffs in both actions intend to challenge the July 28, 2020 Memorandum on the same statutory grounds. Defendants filed the same response to both letters on the docket of both actions. See Defs.’ Letter, No. 16-CV-4756, Dkt. 304 (Aug. 12, 2020); Defs.’ Letter, No. 17-CV-5228, Dkt. 265 (Aug. 12, 2020).

The Court has scheduled a case conference in No. 16-CV-4756 for tomorrow, August 13, 2020, at 2:00 p.m. See Order of August 3, 2020, No. 16-CV-4756. State Plaintiffs in No. 17-CV-5228 respectfully request that the status conference in No. 16-CV-4756 be treated as a pre-motion conference in No. 17-CV-5228 as well. Holding a coordinated proceeding in these actions will minimize duplication and burden on the Court and the parties, and is consistent with how the Court treated these actions before both cases were appealed in 2018. As noted, Defendants agree with this request.

Respectfully submitted,

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